


COMMONWEALTH OF VIRGINIA
Department of Environmental Quality

Subject: Waste Guidance Memo No. 01-2010
Delivery Prohibition and the Compliance Process in the UST Program

To: **Regional Groundwater Managers**

From: **Jeffrey A. Steers** 
Waste Division Director

Date: **September 1, 2010**

Copies: **Regional Directors, Deputy Regional Directors, OSRR Director,
Enforcement Director**

Summary:

This guidance provides a process to regional petroleum tank compliance and enforcement staff to follow to impose fuel delivery prohibition on owners and operators of noncompliant underground storage tanks. This guidance also provides a recommended timeline for staff to follow to obtain compliance for violations that do not warrant expedited imposition of delivery prohibition.

Electronic Copy:

An electronic copy of this guidance is available on DEQ's website at <http://www.deq.virginia.gov/waste/guidance.html>.

Contact information:

Please contact Renee Hooper at (804) 698-4018 or Betty Lamp at (804) 698-4322 with any questions about this guidance.

Disclaimer:

Guidance documents do not establish or affect legal rights or obligations, do not establish a binding norm, and are not determinative of the issues addressed. Decisions in individual cases will be made by applying the laws, regulations, and policies of the Commonwealth to case-specific facts.

Delivery Prohibition and the Compliance Process in the UST Program

INTRODUCTION

This document provides guidance to regional petroleum tank compliance and enforcement staff on the process for imposing fuel delivery prohibition (red tagging) on owners and operators of noncompliant underground storage tanks (USTs). This guidance also provides a recommended timeline for staff to follow to obtain compliance for violations that do not warrant expedited imposition of delivery prohibition.

BACKGROUND

The Federal Energy Policy Act of 2005 (EPACT) makes it unlawful for anyone to deliver a regulated substance into or accept delivery of a regulated substance into certain noncompliant USTs. EPACT also requires states to promulgate regulations to develop processes and procedures to implement the delivery prohibition requirement. In 2008, EPA developed guidance to the states on how to implement the delivery prohibition process. Part IX of the Virginia UST Technical Regulation (9VAC25-580) was promulgated to comply with the requirements imposed by EPACT, as well as EPA guidance, and provides criteria to identify USTs subject to delivery prohibition. The Regulation also describes, in general, the process to “tag” an UST that is subject to delivery prohibition. This guidance provides DEQ regional staff with additional detail on how to identify an UST subject to delivery prohibition and the procedures for moving through the delivery prohibition process.

GUIDANCE

The Regulation, as adopted, identifies two broad classes of violation and differentiates between the response appropriate for each of the two classes. The first class of violations encompasses instances where a tank is not installed with the necessary pollution prevention equipment. These types of violations are referred to as “not equipped to comply” violations and warrant imposition of an expedited delivery prohibition process. In this expedited process, staff identify a violation and move directly into the delivery prohibition process. The second class of violations, with a couple of exceptions, falls into the category of operation and maintenance. These violations may be addressed using a slower track, i.e., the owner/operator is given the opportunity to come into compliance through more traditional methods before staff begin the delivery prohibition process. A recommended timeline for pursuing compliance prior to delivery prohibition for this second class of violations is discussed in this guidance document. **Appendix A** provides the general matrix staff should use to differentiate between violations that warrant the expedited delivery prohibition process and violations that warrant the slower track.

Expedited Process

Inspection:

During an inspection, if the UST inspector identifies a potential violation warranting expedited delivery prohibition (*See* Appendix A for potential violations warranting expedited delivery prohibition), the inspector must provide a Request For Corrective Action (RCA) form that specifies the potential delivery prohibition violation(s) and contains language explaining the delivery prohibition process. This RCA may be left at the facility and/or provided after the inspection via first class mail or email with delivery confirmation to the owner/operator.

Post-Inspection:

The inspector and regional office groundwater manager should review the inspection report and decide whether the violations merit delivery prohibition. If they decide that there is a potential delivery prohibition violation, staff must mail a Notice of Delivery Prohibition Proceedings¹ (Notice) to the owner and operator (if the owner and operator are different entities) identifying the violation(s). (*See* Note below.) The Notice should be mailed via first class mail within 3 business days of the inspection and should include a copy of the inspection report. (Staff may also hand deliver the Notice in lieu of mailing.) If the owner/operator is a corporation or limited liability company and there is any question about the reliability of the address used to mail the Notice, staff must mail a copy of the Notice to the owner/operator's registered agent.² If ownership is disputed, staff must mail a copy of the Notice to all potential owners.³ Staff may also fax or email the Notice to the owner and operator in addition to mailing the Notice.

Note: Although the regulation allows staff to give notice of the impending delivery prohibition process by leaving a copy of the Notice with the employee in charge at the facility, staff must make every effort to mail the Notice to the owner and the operator (and/or the registered agent as discussed above) if there is a reliable contact name and address in the file. Staff should use delivery confirmation to document delivery of the Notice.

Notice of Delivery Prohibition Proceedings:

The Notice will inform the owner and operator that DEQ intends to hold an Informal Fact Finding Proceeding (IFF) to determine whether the issues identified during the inspection are violations of the regulation that warrant delivery prohibition. Staff must use the boilerplate Notice in Appendix B to notify the owner and operator of DEQ's intent to begin delivery prohibition proceedings. The Notice is designed to provide the owner and operator with all the information required by the Administrative Process Act and any changes to the Notice must be approved beforehand by OSRR and the Office of Enforcement.

¹ See Appendix B for boilerplate Notice.

² See <http://www.scc.virginia.gov/clk/bussrch.aspx>. Staff can access the State Corporation Commission's Clerk's Information System database to identify an entity's registered agent. Click on Clerk's Information System and then the link for the relevant type of entity (e.g., corporate, limited liability company). Type some or all of the entity name in the blank provided and hit Enter. Scroll through the list of names provided, select the correct entity, and hit Enter. Select Registered Agent from the list of options provided.

³ Staff may choose to notify the property owner, as well.

The date for the IFF should be chosen before the Notice is sent, and prominently displayed in the Notice. Staff may choose to contact the owner and operator before sending the Notice to notify them that the IFF is forthcoming and offer a choice of meeting dates. The date should be between 21⁴ and 60 calendar days from the date of the inspection. If the owner and operator cannot agree on a date, staff will choose a date.

Return to Compliance Prior to IFF:

The Notice will clearly provide that the owner/operator may correct the alleged violations prior to the IFF. The Notice will provide that the owner/operator must submit any documentation at least 3 business days prior to the meeting if he/she intends to prove compliance before the IFF. If the owner/operator submits documentation to prove compliance by the deadline, then staff should review the documents promptly and communicate any deficiencies to the owner/operator. If the documentation indicates that the alleged violations are corrected, then staff should cancel the IFF and notify the owner/operator of the cancellation in writing.

Delivery Prohibition IFF:

Each Regional Office will reserve one day a month to hold the Delivery Prohibition IFFs. In most cases, owners/operators will be given the choice of two dates during the month to schedule their IFF: the regular regional office day and a “makeup” day in Central Office. Absent extenuating circumstances, if the owners/operators cannot make one of those two days or do not show up on the day of the meeting, the meeting will be held in their absence.

One designated individual will act as the presiding officer for delivery prohibition IFFs held in PRO, TRO and VRO. Another designated individual will act as presiding officer for delivery prohibition IFFs held in NRO, SWRO and BRRO⁵. The presiding officer will handle communication with the owners/operators once the Notice of Informal Fact Finding Proceeding (Notice) has been sent and will make decisions regarding rescheduling.

The proceeding should be informal in tone. Regional program staff will advocate at the meeting on behalf of DEQ. At the region’s discretion, the job of advocate can be handled by the inspector, the enforcement specialist or manager, or the groundwater manager. A checklist will be available for regional staff to use to prepare for the proceeding. Staff should record the proceedings via audio recorder.

In most cases, the presiding officer will issue the decision orally during the meeting and follow up with a decision in writing. The goal is to provide a written decision at the meeting. To facilitate this goal, a boilerplate decision document will be used to create each individual

⁴ Occasionally, circumstances may warrant conducting the informal fact finding before 21 days has elapsed. If regional staff believe that the facts of the case support a shorter timeframe, they should contact central office to discuss.

⁵ Central Office will develop and maintain a pool of volunteers to act as backup for these individuals.

delivery prohibition decision.⁶ If either the owner or operator is not present at the IFF then the presiding officer should mail the decision to the absent party. Facsimile or email transmission with receipt confirmation can be used in lieu of the mail. If the presiding officer finds that no violation exists, he or she will note that in the decision and state that the delivery prohibition process is over.

Attaching the Delivery Prohibition Tag:

If the presiding officer determines that a delivery prohibition violation exists, the inspector or other staff should return to the facility no later than 7 calendar days from the date of the decision (and no sooner than 3 calendar days if the decision is mailed to the parties unless the parties have confirmed receipt of the decision before the waiting period has elapsed) and attach a delivery prohibition tag to the fill pipe for each affected tank.

The inspector should make an attempt to notify the owner/operator by telephone or e-mail of the anticipated date that the tag will be applied. Before attempting to affix the tag, the inspector may take any precautions necessary to protect his or her safety, including requesting a police escort or other protection, or leaving the site at any time if conditions appear hostile.

At the time that the tag is attached to the fill pipe, the inspector should photograph the UST(s) fill pipe before and after the tag is in place. Staff may also check the volume of fuel in the UST(s) and/or take a dispenser totalizer reading, but this is not required.

Staff should make every effort to attach the delivery prohibition tag to the tank's fill pipe. If the spill bucket around the fill pipe is full of water or product and the tag cannot be applied, the inspector should request the owner/operator empty the spill bucket. If the owner/operator refuses to empty the spill bucket, the inspector should, at the least, attach the tag to the manhole cover, photograph the full spill bucket and the tag, and document the owner/operator's refusal before leaving the facility. Staff should document all observations, actions and conversations while at the site in a memo to the file.

The presence of the tag on the fill pipe of an ineligible UST shall be sufficient to notify any person that the UST is ineligible for delivery or deposit.

Delivery Company Notification

On the day the delivery prohibition tag is applied, the inspector will notify the OSRR webmaster to include the facility on DEQ's Delivery Prohibition web page. Central Office will maintain an email list of delivery companies interested in receiving notifications of delivery prohibition. Central office staff will send an email to the list members each time a new facility has been added to the delivery prohibition list providing the name and location of the facility where the

⁶ Central Office will take the lead in developing boilerplate documents such as a checklist for the advocate, a script for the presiding officer, the decision, return to compliance/IFF cancellation letter, and return to compliance/delivery prohibition tag removal letter.

tag(s) has been applied. If staff know what company delivers to the tagged facility, staff may also choose to contact the delivery company directly as a courtesy.

Future Deliveries Prohibited:

If staff discovers or suspects that a delivery has been made to a tagged tank, or that a tag has been altered, defaced or removed then staff should notify the Regional Groundwater Manager and Central Office.

Temporary Removal of the Tag:

Upon written approval by DEQ (email is sufficient), the tag may be temporarily removed to conduct repairs, upgrades, testing or to remove product. If approval involves accepting product into the tank to conduct testing, the approval letter must set out the conditions under which the delivery can be made, including the amount of regulated substance that can be delivered into the tank.

Return to Compliance Post IFF:

Staff should review any documents from the owner/operator supporting return to compliance and contact the owner/operator within 7 calendar days of receipt to communicate whether the documentation is sufficient or insufficient to confirm that the owner/operator has returned to compliance. If the documentation is insufficient, staff should outline the deficiencies in writing and request the necessary documents to determine return to compliance.

Staff should direct the letter to the party who submitted the documents but should copy any other parties as well. For example, if the owner sent in the documents, staff should address the letter to the owner and copy the operator.

If the documentation is sufficient to verify return to compliance for one or all USTs at the facility, then the delivery prohibition tag shall be removed for those USTs that are in compliance.

Delivery Prohibition Tag Removal:

Within 2 business days of determining that the owner/operator has returned one or all tagged USTs at the facility to compliance, staff must return to the facility to remove the delivery prohibition tag. Staff should make every effort to remove the tag in person. However, if circumstances prohibit returning to the facility within this time frame (e.g., insufficient staff resources), staff may send a letter to the owner and operator authorizing removal of the delivery prohibition tag. Staff may fax or e-mail the letter but should follow up by mailing the authorization letter by first class mail. Staff should also notify the OSRR webmaster to remove the facility from DEQ's Delivery Prohibition web page.

Non-expedited Process

For all other potential violations of Parts II, III, IV or VI of the UST Technical Regulation or the requirements of the UST Financial Responsibility Regulation, staff must give the owner or operator a reasonable amount of time to correct the deficiency(s) before moving into the delivery prohibition process. (See **Appendix A** for a matrix of violations warranting delivery prohibition on the slower track.)

Initiating the Compliance Process

For violations that warrant delivery prohibition on the slower track, staff should follow the typical UST compliance timeline to give the owner or operator an opportunity to come into compliance before initiating delivery prohibition. The timeline below should be used first to attempt to obtain compliance for all violations described as “Regular Process Violations” in Appendix A.

Step 1: Day 1 to 89 – Issue Deficiency Notice. Staff should issue a Deficiency Notice (either a RCA form or Deficiency Letter) to the owner⁷. The Deficiency Notice should require the owner to complete corrective actions as soon as practicable, but no more than 90 days from the date of inspection. For most violations, 30 days is allowed with extensions possible. Staff should document extensions in writing; email or fax approvals are sufficient. All owners of noncompliant UST facilities should receive this notice, regardless of the estimated time to return to compliance. Staff is encouraged to provide informal compliance assistance to encourage return to compliance.

Agreements with cooperative owners who plan to return to compliance in up to one year may be formalized in a Compliance Agreement (AKA “Tanks LOA”).

Step 2: Staff should evaluate whether the facility owner has signed a Compliance Agreement or returned to compliance. If not, staff should move to step 3. (Note: this step may take some time to complete depending on the evaluation cycle.)

Step 3: Day 90 to 179 – Issue Warning Letter. If the facility owner has not returned to compliance and a Warning Letter has not yet been issued, staff should issue a Warning Letter requiring return to compliance as soon as practical but no more than 90 days from the date of the letter. Staff should continue to provide informal compliance assistance to encourage return to compliance.

In a small number of cases⁸, the Warning Letter may be skipped in favor of issuing an NOV.

⁷ In the UST program, tank owners are traditionally pursued first for compliance because owners are the more identifiable party due to our registration program. However, the Regulation holds both the owner and operator equally responsible for compliance; therefore, staff should be prepared to pursue the operator for compliance if circumstances warrant.

⁸ For example, staff may want to skip the Warning Letter in a case where the owner is already in enforcement negotiations due to other noncompliant facilities, the owner has not responded to repeated communication from DEQ or staff have identified the same substantive violations at the same facility for the same owner as in the previous inspection.

Agreements with cooperative owners who plan to return to compliance in up to one year may be formalized in a Compliance Agreement (AKA “Tanks LOA”).

Step 4: Staff should evaluate whether the facility owner has signed a Compliance Agreement or returned to compliance. If not, staff should move to step 5. (Note: this step may take some time to complete depending on the evaluation cycle.)

Step 5: Day 180 – Issue Notice of Violation (NOV). Staff should issue a NOV and refer the owner to enforcement if (1) the facility owner has not returned to compliance or signed a Compliance Agreement, and (2) a NOV has not yet been issued.

Initiating the Delivery Prohibition Process

As laid out above, by the time the Notice of Violation has been issued, regional staff generally will have moved through the steps discussed above and will have been unsuccessful in obtaining compliance. At this point, it is appropriate to begin delivery prohibition proceedings⁹.

NOV Meeting

Staff generally issue the NOV and hold a meeting within a short time period to discuss the violations and the owner’s plan to return to compliance. At this time, staff often present a draft consent order for discussion. Staff may choose to provide a Notice of Delivery Prohibition Proceedings (Notice) to the owner and operator¹⁰ along with the NOV and hold the Delivery Prohibition IFF during this meeting. If staff choose this approach, staff must be sure to provide both the owner and operator with the Notice before the meeting.

In the alternative, staff may provide the owner with the Notice during the NOV meeting and hold the delivery prohibition IFF at a later date. Again, staff must provide the Notice to both the owner and operator.

Note: In some cases (see footnote 8), staff may chose to move directly to a Notice of Violation without first issuing a Warning Letter. In this circumstance, it is not appropriate to move directly into the delivery prohibition process, as described above. The owner and operator should be given a reasonable opportunity to comply before initiating delivery prohibition proceedings.

If staff have issued a NOV and the owner/operator has failed to respond within 10 days of the date of the NOV either to propose a schedule for returning to compliance or set a meeting date, staff should initiate the delivery prohibition process by sending a Notice to the owner and

⁹ Although the NOV step is generally the place to begin delivery prohibition, other events can trigger the delivery prohibition process. For example, if the UST owner/operator has failed to meet compliance deadlines or milestones laid out in a signed Letter of Agreement, Consent Order or unilateral administrative order, staff can initiate delivery prohibition proceedings.

¹⁰ Owners are generally pursued first for compliance in the UST program (see footnote 7 *supra*). However, once delivery prohibition proceedings are initiated, the operator must be included in all correspondence and become a party to all delivery prohibition proceedings.

operator and follow the delivery prohibition procedures described above. This applies regardless of whether a Warning Letter was issued before the NOV.

Delivery Prohibition Process

Once staff have mailed or hand delivered the Notice of Delivery Prohibition Proceedings to the owner and operator identifying the potential delivery prohibition violation(s) and scheduled the meeting, the delivery prohibition process will follow the steps outlined above for the expedited process.

Note: Identifying one class of violations that requires the immediate expedited delivery prohibition process and another that requires staff to move down the normal compliance/enforcement pathway first will mean that, at times, staff may be proceeding down parallel tracks to address all the violations identified at the facility, i.e., the delivery prohibition process to address one or more “not equipped to comply” type violations and the normal compliance/enforcement process to address other violations identified at the same inspection.

Other provisions

Facility-wide Delivery Prohibition

9VAC25-580-370(F) provides that the board, after Notice and a Delivery Prohibition IFF, may classify all USTs at a facility as ineligible for delivery if one or more tanks has been so classified for more than 90 days. Staff should consider utilizing this provision when the owner/operator has made no attempt to return the tagged tank(s) to compliance for more than 90 days and the tagged tank(s) poses an imminent risk to the environment. What constitutes an imminent risk is fact specific and will be handled on a case-by-case basis in consultation with Central Office.

Emergency, Rural or Remote Exception:

9VAC25-580-370(I) provides that if the board determines that a delivery prohibition violation exists it can consider whether the threat posed by the violation is outweighed by the need for fuel from those USTs to meet an emergency situation or to meet the needs of a rural and remote area. If the board finds that such a condition outweighs the immediate risk of the violation, the board may defer imposition of delivery prohibition for up to 180 days. In every such case the director shall consider (i) issuing a special order under the authority of subdivision 10 of § 10.1-1186 of the Code of Virginia prescribing a prompt schedule for abating the violation and (ii) imposing a civil penalty.

If staff suspects that these circumstances exist, staff should consult with Central Office before proceeding. In addition, the boilerplate Notice will require any owners/operator who seeks to request this exception to raise it during the Delivery Prohibition IFF.

APPENDIX A

Underground Storage Tank Delivery Prohibition Decision Matrix¹¹

Regulatory Requirement	<u>Expedited Process</u> Violations (to be interpreted narrowly)	Regular Process Violations (to be interpreted broadly – read “All other violations, for example...”)
Spill Prevention		
Spill Buckets/Spill Containment	<ul style="list-style-type: none"> ▪ Not installed 	<ul style="list-style-type: none"> ▪ Collar not seated around fill port ▪ Cracked or damaged ▪ Spill bucket <u>full</u> of water/regulated substance
Overfill Prevention		
Ball Float	<ul style="list-style-type: none"> ▪ Not installed (i.e., not able to be observed or verified via owner certification on 7530 or installation records by inspector) 	<ul style="list-style-type: none"> ▪ Not functioning (broken ball/cage)
Automatic Shutoff	<ul style="list-style-type: none"> ▪ Not installed 	<ul style="list-style-type: none"> ▪ Improperly installed ▪ Not functioning (flapper works but bent, etc.)
Alarm	<ul style="list-style-type: none"> ▪ Not installed 	<ul style="list-style-type: none"> ▪ Installed in a manner that impedes proper functionality ▪ Not functioning (alarm is not audible to delivery driver, does not always work, needs repair)
Corrosion Protection		
Galvanized or Bare Steel Tank/Piping (including Sti-P3 tanks)	<ul style="list-style-type: none"> ▪ No Cathodic Protection installed ▪ CP (impressed current) verified to have been turned off more than 180 days and no recent integrity assessment has been performed. 	<ul style="list-style-type: none"> ▪ 3-yr. testing not documented/failed test ▪ Flex connectors covered in dirt (need CP or boot) ▪ Impressed current CP 60 day records missing ▪ CP (impressed current) turned off for less than 180 days ▪ Violations of tank lining reqts

¹¹This Matrix is based on a narrow interpretation of Section 370 of the Regulation to identify a manageable subset of circumstances that would benefit most from immediate action. As the agency and the regulated community gain experience with the delivery prohibition process and its application, the Matrix may be modified to expand the list of violations which warrant the expedited process. Nothing in this Table is intended to conflict with the information contained in the DEQ Petroleum Storage Tank Compliance Manual (2001).

Regulatory Requirement	<u>Expedited</u> Process Violations (to be interpreted narrowly)	Regular Process Violations (to be interpreted broadly – read “All other violations, for example...”)
Release Detection (Tank)		
Inventory Control + TTT	<ul style="list-style-type: none"> No data collected AND no tank tightness test AND no stick 	<ul style="list-style-type: none"> Equipment not calibrated, damaged or not functional (e.g., stick too short) Not reconciled to 1%+130 gallons Method expired (e.g., > 10 years)
Manual Tank Gauging	<ul style="list-style-type: none"> No data collected AND no tank tightness test (if applicable) AND no stick 	<ul style="list-style-type: none"> Criteria for method not followed (e.g. incorrect math) Tank >2,000 gallons (invalid method) Method expired (e.g., > 10 years)
ATG	<ul style="list-style-type: none"> No console control box OR no probe 	<ul style="list-style-type: none"> Unplugged Not programmed correctly
Vapor Monitoring	<ul style="list-style-type: none"> No device OR no monitoring well 	<ul style="list-style-type: none"> Criteria for method not followed (e.g., site assessment not performed) Equipment damaged
Groundwater Monitoring	<ul style="list-style-type: none"> No monitoring well OR no device 	<ul style="list-style-type: none"> Criteria for method not followed (e.g., site assessment not performed) Equipment damaged
Interstitial Monitoring	<ul style="list-style-type: none"> Interstitial Monitoring has no control box, sensor, or device 	<ul style="list-style-type: none"> Criteria for method not followed Equipment damaged
Statistical Inventory Reconciliation (SIR)	<ul style="list-style-type: none"> No measuring device (stick/probe) AND no paid vendor contract AND no data collected 	<ul style="list-style-type: none"> Criteria for method not followed Records missing
Release Detection - Pressurized and Gravity Fed Piping		
Automatic Line Leak Detector (ALLD) + Annual Line Test	<ul style="list-style-type: none"> No ALLD present 	<ul style="list-style-type: none"> Line test not documented ALLD not programmed correctly ALLD (mechanical) not tested
ALLD + ATG/LLD	<ul style="list-style-type: none"> No ALLD present 	<ul style="list-style-type: none"> ATG unplugged or not programmed correctly ALLD (mechanical) not tested
ALLD + Vapor	<ul style="list-style-type: none"> No ALLD present 	<ul style="list-style-type: none"> Criteria for method not

Regulatory Requirement	<u>Expedited</u> Process Violations (to be interpreted narrowly)	Regular Process Violations (to be interpreted broadly – read “All other violations, for example...”)
Monitoring	<ul style="list-style-type: none"> No monitoring well 	<ul style="list-style-type: none"> followed (e.g., site assessment not performed) or no records ALLD (mechanical) not tested
ALLD + Groundwater Monitoring	<ul style="list-style-type: none"> No ALLD present No monitoring well 	<ul style="list-style-type: none"> Criteria for method not followed (e.g., site assessment not performed) or no records ALLD (mechanical) not tested
ALLD + Interstitial Monitoring	<ul style="list-style-type: none"> No ALLD present No sump sensors 	<ul style="list-style-type: none"> Criteria for method not followed or no records ALLD (mechanical) not tested
ALLD + SIR	<ul style="list-style-type: none"> No ALLD present No measuring device (stick/probe) AND no paid vendor contract AND no data 	<ul style="list-style-type: none"> Criteria for method not followed Records missing ALLD (mechanical) not tested
Release Detection Unsafe Suction Piping – Regulated		
Line Tightness Testing	<ul style="list-style-type: none"> No record that line tightness test was performed 	<ul style="list-style-type: none"> Criteria for method not followed
Vapor Monitoring	<ul style="list-style-type: none"> No monitoring well No records 	<ul style="list-style-type: none"> Criteria for method not followed (e.g., site assessment not performed)
Groundwater Monitoring	<ul style="list-style-type: none"> No monitoring well No records 	<ul style="list-style-type: none"> Criteria for method not followed (e.g., site assessment not performed)
Interstitial Monitoring	<ul style="list-style-type: none"> No line OR sump sensors Use of this method with single walled piping 	<ul style="list-style-type: none"> Criteria for method not followed
SIR	<ul style="list-style-type: none"> No measuring device AND no paid vendor contract AND no data 	<ul style="list-style-type: none"> Criteria for method not followed Records missing
Suspected Release Confirmation	<ul style="list-style-type: none"> Failure to investigate or confirm 	<ul style="list-style-type: none"> Improper investigation or low risk area

APPENDIX B

Boilerplate Documents

Notice of Delivery Prohibition Fact Finding Proceeding

**NOTICE OF DELIVERY PROHIBITION PROCEEDINGS
(INFORMAL FACT-FINDING CONFERENCE)**

[Date]

[Owner]

[Operator]

Re: [Facility name, address, VA.]
[Facility ID]

Dear xxxxxx:

You are hereby notified that, pursuant to § 2.2-4019 of the Code of Virginia (“Va. Code”), the State Water Control Board, (the Board) acting through the Department of Environmental Quality (DEQ or the Department), will conduct an Informal Fact Finding Proceeding on [xxxxxx at xxx A.M]. The purpose of the Proceeding is to determine whether the underground storage tank(s) (USTs) located at this facility and listed in this Notice are ineligible for delivery, deposit, or acceptance of a regulated substance based on violation(s) of the Underground Storage Tanks: Technical Standards and Corrective Action Requirements Regulation,¹² (the Regulation) as described below.

This letter notifies you of information upon which DEQ may rely to make a case decision in this matter. In addition to the information provided with this Notice, DEQ may rely on any documents and information in the Department’s file on this matter, along with the applicable law and agency precedent. The files are public documents and are available for your inspection at the DEQ’s [xxx] Regional Office located at [address].

OBSERVATIONS AND LEGAL REQUIREMENTS

¹² 9 VAC 25-580-10 et seq. The Regulation can be found at:
<http://www.deq.virginia.gov/export/sites/default/tanks/pdf/usttech.pdf>

On [date], DEQ staff conducted an inspection of the USTs at [facility address]. File and UST registration documents were also reviewed. A copy of the Request for Corrective Action [and/or Inspection Report] is enclosed, which describes the staff's factual observations and identifies the applicable legal requirements.

These potential violations remain unresolved and will be the subject of the informal fact-finding conference:

[List potential violations and identify which USTs are implicated]

PROCEDURES

DEQ will conduct the Informal Fact Finding Proceeding before [Name of Presiding Officer] of DEQ. You may appear in person or by counsel or other qualified representative to present factual data, argument, or proof in connection with this case. DEQ may rely on the enclosed documents to substantiate the alleged violations, as well as other documents in its files.

[Name] will represent DEQ at this Proceeding. Based upon DEQ's file and the record of this Proceeding, DEQ will be requesting that the Presiding Officer find that the referenced USTs at [facility name] are in violation of the Regulation and ineligible for delivery, deposit or acceptance of a regulated substance based on 9VAC 25-580-370 of the Regulation.¹³

RESOLUTION

Please contact [Inspector] at [(xxx) xxx-xxxx] if you wish to resolve the potential violations prior to the Informal Fact Finding Proceeding. If you complete the necessary work to resolve the potential violations prior to the date of the Proceeding, contact [Inspector name] immediately so that compliance can be verified. You must provide a written report and appropriate documentation demonstrating that compliance has been achieved 3 business days prior to the Proceeding. If compliance is verified, the Proceeding will be cancelled and the USTs will be eligible for receipt of a regulated substance. If compliance is not verified, the Proceeding will go forward as scheduled.

FUTURE ACTIONS

If these tanks are determined to be in violation of 9 VAC 25-580 and ineligible for delivery, a red tag/delivery prohibition notice will be placed on the fill port of the ineligible

¹³ You may request to be heard on the Emergency, Rural or Remote Exception. 9VAC25-580-370(I) provides that if the Presiding officer, acting on behalf of the Board, determines that a delivery prohibition violation exists he or she can consider whether the threat posed by the violation is outweighed by the need for fuel from those USTs to meet an emergency situation or to meet the needs of a rural and remote area. If it is determined that such a condition outweighs the immediate risk of the violation, the Presiding officer may defer imposition of delivery prohibition for up to 180 days. In every such case the director shall consider (i) issuing a special order under the authority of subdivision 10 of § 10.1-1186 of the Code of Virginia prescribing a prompt schedule for abating the violation and (ii) imposing a civil penalty.

UST(s) and delivery, deposit or acceptance of a regulated substance into the UST(s) will be prohibited until such time as the UST(s) are returned to compliance. Please be advised that removal of the delivery prohibition tag is prohibited by 9 VAC 25-580-370 unless authorized, in writing, by DEQ. In addition, for each alleged violation, DEQ is authorized to pursue enforcement actions, seek civil penalties and seek compliance with its rules and regulations in any manner allowed by law.

Please contact [Name of Presiding Officer] within 5 business days of the date of this letter to confirm whether you and/or a representative will attend the Proceeding or with any questions relating to this Proceeding. [He/she] can be reached at [(xxx) xxx- xxxx.]

Please note that the Informal FactFinding Proceeding will be held regardless of whether you or your representative chooses to attend.

Sincerely,

Regional office

Enclosures

cc: Presiding Officer
RO Agency Advocate
OSRR Director
RO Groundwater Manager
Tank Enforcement Manager

Return to Compliance Letter

[Date]

[Owner Name and Address]

[Operator Name and Address]

Re: [FACILITY NAME AND ID ##]
Delivery Prohibition Tag Removal

Dear [owner and operator]:

On [DATE], the Department of Environmental Quality (DEQ), acting on behalf of the State Water Control Board, held an Informal Fact Finding Proceeding in accordance with 9 VAC 25-580. The purpose of the Proceeding was to determine whether the UST(s) at this facility were ineligible for delivery, deposit, or acceptance of a regulated substance based on violation(s) of the Underground Storage Tanks: Technical Standards and Corrective Action Requirements Regulation¹⁴ 9 VAC 25-580-10 *et seq.* By decision dated [DATE], the DEQ determined that the following underground storage tank(s) (USTs) at the referenced facility were in violation of [insert sections of regulation violated] and ineligible to accept delivery or deposit of a regulated substance:

[insert identifying tank information]

DP Tag #	DEQ Tank #	Tank Size (Gal)	Product Stored	DP Tag #	DEQ Tank #	Tank Size (Gal)	Product Stored

On [DATE] DEQ personnel attached a delivery prohibition tag to each of the ineligible USTs in accordance with 9 VAC 25-580-370.

On [DATE], the facility submitted a written report and supporting documentation to demonstrate that the violation(s) rendering the UST ineligible for delivery have been resolved. Based on a review of the documentation [insert if applicable "and subsequent site visit"] staff agrees that the violation(s), determined on [insert decision date] has/have been resolved.

[Within 2 business days of the date of this letter, DEQ staff, in accordance with 9 VAC 25-580-370, will remove the delivery prohibition tag(s) from the above referenced USTs. Upon

¹⁴ The Underground Storage Tanks: Technical Standards and Corrective Action Requirements Regulation can be found at <http://www.deq.virginia.gov/export/sites/default/tanks/pdf/usttech.pdf>

removal of the delivery prohibition tags, the USTs will be eligible for delivery, deposit or acceptance of a regulated substance.]

OR

[By this letter, you are authorized, pursuant to 9 VAC 25-580-370, to remove the delivery prohibition tag immediately. Upon removal of the delivery prohibition tag, the USTs are eligible for delivery, deposit, or acceptance of a regulated substance. You must return the delivery prohibition tags to DEQ at the following address: [insert regional office address]].

Please note that if DEQ discovers violations at this facility as a result of a future inspection or site visit, the USTs may again be subject to the delivery prohibition process at that time. Further, this letter has no bearing on any other enforcement actions that may be pending at this facility.

Please contact me at XXX-XXX-XXXX if you have further questions.

Sincerely,

Regional Groundwater Manager

cc: Presiding officer
OSRR Director
Inspector
Webmaster
E-mail list